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 12 HEALTHCARE INC. and GE HEALTHCARE  
 13 BIO-SCIENCES CORP.

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

16 PETER JAY GERBER and MIRIAM  
 17 GOLDBERG,

18 Plaintiffs,

19 v.

20 BAYER CORPORATION AND  
 21 BAYER HEALTHCARE  
 22 PHARMACEUTICALS, INC.; BMC  
 23 DIAGNOSTICS, INC.; CALIFORNIA  
 24 PACIFIC MEDICAL CENTER;  
 25 GENERAL ELECTRIC COMPANY;  
 26 GE HEALTHCARE, INC.; GE  
 27 HEALTHCARE BIO-SCIENCES  
 28 CORP.; McKESSON  
 CORPORATION; MERRY X-RAY  
 CHEMICAL CORP.; and DOES 1  
 through 35

29 Defendants.

30 CASE NO. CV-07-5918-JSW

31 **[PROPOSED] ORDER DENYING  
 32 PLAINTIFFS' MOTION FOR REMAND**

33 **[Submitted Pursuant to Civil Standing  
 34 Orders No. 9]**

35 **[Jury Trial Demanded]**

36 (San Francisco County Superior Court Case No.  
 37 CGC07468577)

38 Plaintiffs Peter Jay Gerber and Miriam Goldberg's ("Plaintiffs") Motion for  
 39 Remand ("Remand Motion") came on for hearing on January 11, 2008 before the Hon.  
 40 Jeffrey S. White of the above-entitled court. After considering the papers and hearing  
 41 argument of counsel, the Court **HEREBY DENIES** Plaintiffs' Remand Motion and finds  
 42 as follows:  
 43 4811-8308-2754.1

44 **[PROPOSED] ORDER DENYING PLAINTIFFS'  
 45 MOTION FOR REMANDCASE**

46 NO. CV-07-5918-JSW

1 (1) This Court has jurisdiction pursuant to 28 U.S.C. 1441(b).

2 (2) The non-diverse Distributor Defendants McKesson Corporation and Merry

3 X-Ray Chemical Corp., and the non-diverse Facility Defendants BMC Diagnostics, Inc.

4 and California Pacific Medical Center were fraudulently joined. There is no reasonable

5 basis for any of Plaintiffs' claims against these defendants. (See *Maffei v. Allstate Ins.*

6 *Co.*, 412 F. Supp. 2d 1049, 1053 (E.D. Cal. 2006).)

8                   Alternatively, the Court **HEREBY DECLINES TO RULE** on Plaintiffs' Remand  
9 Motion until decisions have been rendered on (1) the pending Motion to Transfer  
10 Gadolinium-based contrast agent litigation to a Multi-District Litigation ("MDL") court,  
11 which is currently set for hearing on the MDL Panel's January 30, 2008 docket; and (2) a  
12 motion to transfer this action to the designated MDL court. Further, in the event this  
13 action is transferred to an established MDL, this Court **DEFERS RULING** on the  
14 Remand Motion to the designated MDL court. (See *Johnson v. Merck & Company*, 2007  
15 WL 754882 (N.D.Cal.).)

## IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

4811-8308-2754.1

- 2 -

[PROPOSED] ORDER DENYING PLAINTIFFS' MOTION FOR REMANDCASE

NO. CV-07-5918-JSW